

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Public Utilities Providing Service in	)	
California under Sellers' Choice Contracts	)	Docket No. EL04-108-000
	)	

**MOTION OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
REQUESTING EXTENSION OF THE SETTLEMENT PERIOD, AND  
SUSPENSION OF THE PREHEARING CONFERENCE AND THE  
PROCEDURAL SCHEDULE**

**To: The Honorable Curtis L. Wagner, Jr.  
Chief Administrative Law Judge**

**The Honorable William J. Cowan  
Deputy Chief Administrative Law Judge**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, the California Independent System Operator Corporation ("CAISO") respectfully submits this motion requesting that the Chief Administrative Law Judge (i) extend the settlement discussions in this proceeding until February 18, 2005, (ii) suspend the prehearing conference scheduled for December 15, 2004, and (iii) suspend the procedural schedule and permit the CAISO to submit a consensus proposal of the parties and Commission trial staff for a new procedural schedule by December 17, 2004. The CAISO notes that the Settlement Judge has supported extension of the settlement discussions and has recommended suspension of the prehearing conference.<sup>1</sup>

---

<sup>1</sup> See *Status Report To The Commission*, Docket No. EL04-108-000 at P. 2 (December 9, 2004) ("Status Report").

## **I. BACKGROUND**

### **A. Commission Order Initiating Proceeding to Examine Treatment of Sellers' Choice Contracts Under a Locational Marginal Pricing Congestion Management System**

1.1 On June 17, 2004, the Commission, in an order addressing various aspects of the CAISO's proposed market redesign,<sup>2</sup> initiated a proceeding "for the purpose of investigating . . . the feasibility of both upholding [sellers' choice] contracts without modification and implementing the CAISO's proposed redesign including the degree to which these types of contracts present market inefficiencies and are not operationally and economically compatible with the CAISO's proposed redesign; and the options for resolving the issues surrounding the sellers' choice contracts."<sup>3</sup>

1.2 Attached to the Commission's order was a list of long-term power contracts to which the California Energy Resources Scheduling Division ("CERS") of the California Department of Water Resources was a party. The Commission directed the Presiding Administrative Law Judge ("ALJ"): i) to identify the universe of CERS contracts at issue in this proceeding;<sup>4</sup> and, ii) to "explore with the parties and the CAISO the viability of creating a trading hub or other commercial solution as a means of addressing the issues presented by the sellers' choice contracts."<sup>5</sup> The Commission also

---

<sup>2</sup> *Order on Further Development of the California ISO's Market Redesign and Establishing Hearing Procedures, California Independent System Operator Corporation and Public Utilities Providing Service in California under Sellers' Choice Contracts*, Docket Nos. ER02-1656-017, *et al.* and EL04-108-000, 107 FERC ¶ 61,274 (2004) ("Order").

<sup>3</sup> *Id.* at P. 166.

<sup>4</sup> *Id.* at fn. 100.

<sup>5</sup> *Id.* at P. 166.

directed that the Presiding ALJ report his/her findings to the Commission by September 15, 2004.<sup>6</sup>

**B. Prehearing Activities**

1.3 On June 24, 2004, the Chief Administrative Law Judge designated Judge Isaac Benkin as the Presiding ALJ in this proceeding.<sup>7</sup>

1.4 On July 1, 2004, Judge Benkin convened a prehearing conference to establish an expedited procedural schedule to accommodate the Commission's September 15, 2004 deadline. The initial schedule, outlined in Judge Benkin's prehearing order,<sup>8</sup> provided for a hearing to begin on August 3, 2004, a draft report to the Commission by September 7, 2004, comments on the draft report on September 13, 2004, before the submission of the report required by the Commission on September 15, 2004.<sup>9</sup>

1.5 At the July 1, 2004 prehearing conference, Judge Benkin also established a Data Acquisition Committee ("DAC") to compile a list of sellers' choice contracts that might be subject to investigation in this proceeding. The final inventory of contracts that was prepared by the DAC identified 259 contracts that parties to this docket reported to the DAC.

1.6 On July 14, 2004, Judge Benkin convened a technical conference at which the CAISO shared with other parties to the proceeding its view of the problems created by the sellers' choice contracts. At that technical conference, the parties to the

---

<sup>6</sup> *Id.*

<sup>7</sup> *Order of Chief Judge Making Substitute Designation of Presiding Administrative Law Judge and Scheduling Prehearing Conference*, Docket No. EL04-108-000 (June 24, 2004).

<sup>8</sup> *Presiding Administrative Law Judge's Prehearing Order*, Docket No. EL04-108-000, at 2 (July 19, 2004).

<sup>9</sup> *Id.*

proceeding also requested that Judge Benkin seek an extension of the litigation schedule and initiation of settlement discussions so that the parties could attempt to resolve the matters set for hearing through the settlement process.

**C. Postponement of Hearing and Initiation of Settlement Discussions and Settlement Judge Procedures**

1.7 On July 19, 2004, the Chief Administrative Law Judge extended the procedural schedule, postponing the evidentiary hearing until February 7, 2005, and the date for initial decision until March 31, 2005, with briefs on exceptions to be filed by April 15, 2005, and briefs opposing exceptions to be filed by April 26, 2005, stating that “the likelihood of settlement of the sellers’ choice power-purchase contract issue is so great that the public interest will be served by an extension of the procedural schedule.”<sup>10</sup> The Chief Administrative Law Judge also initiated Settlement Judge procedures effective until December 10, 2004, noting that “[i]f the participants are close to . . . agreement, they reserve the right to ask for additional time.”<sup>11</sup>

1.8 In a July 22, 2004 order, the Chief Administrative Law Judge appointed Judge Judith Dowd to serve as Settlement Judge.<sup>12</sup>

**D. Settlement Conferences and Stakeholders Meetings**

1.9 Judge Dowd convened settlement conferences on August 3, 2004, September 1, 2004, October 19, 2004 and November 9, 2004.

---

<sup>10</sup> *Order of Chief Judge Extending Procedural Schedule and Initiating Settlement Judge Procedures*, Docket No. EL04-108-000, at 2 (July 19, 2004).

<sup>11</sup> *Id.* at P. 6.

<sup>12</sup> *Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference*, Docket No. EL04-108-000 (July 22, 2004).

1.10 During the period covered by these settlement conferences, in order to facilitate the parties' discussion of the use of trading hubs as a means to address the effects of the sellers' choice contracts, the CAISO issued a White Paper outlining the operation of trading hubs under an LMP congestion management system, convened stakeholder meetings to discuss the development and operation of trading hubs under LMP, accepted two rounds of stakeholder comments regarding its trading hub proposal, and issued a market notice with its proposal for the development of existing zone generator trading hubs.

1.11 At the November 9, 2004 settlement conference, the CAISO announced its intention to develop a proposal for the CAISO's inter-Scheduling Coordinator trade settlement services under LMP for settling bilateral contracts that would require physical validation of inter-Scheduling Coordinator trades at specific nodes. Subsequently, on November 19, 2004, the CAISO issued a White Paper describing the proposal, to allow stakeholders to prepare for two stakeholder meetings, one held on December 9, 2004 and the second scheduled for January 11, 2005, to discuss the proposal.

1.12 In a November 23, 2004 order, the Chief Administrative Law Judge noted that Judge Benkin would be unavailable for further proceedings in this docket and designated Judge William J. Cowan to serve as hearing judge and to issue an Initial Decision. In that order, the Chief Administrative Law Judge also extended the deadline for an initial decision in this proceeding to April 29, 2005, and cancelled the expedited schedule for briefs on exceptions and directed that such briefs be filed on a timetable in accordance with the Commission's rules.<sup>13</sup>

---

<sup>13</sup> *Order of Presiding Judge Granting Late-Filed Motion For Leave to Intervene*, Docket No. EL04-  
( . . . continued)

**E. Motions to Dismiss Various Contracts From Proceeding**

1.13 In a series of ten motions to dismiss submitted to the Commission in November and December, 2004, parties to at least 143 contracts sought to have their contracts dismissed from the proceeding because, among other reasons: i) the contracts were not true sellers' choice contracts and did not present problems associated with the adoption of LMP by the CAISO; ii) the parties to the contracts committed to work out between themselves any problems arising from the adoption of LMP, without assistance from the Commission; or, in some instances, iii) the contracts would expire before the initiation of LMP.

1.14 If the Commission grants the motions to dismiss, over half of the contracts initially identified on the inventory prepared by the DAC (see ¶1.5 above) will have been dismissed from the proceeding. Thus, as contemplated by the parties when they requested the first extension of the procedural schedule, the settlement period established by the Chief Administrative Law Judge in his order of July 19, 2004, has enabled the parties to clear away many of the contracts identified by the DAC, which would otherwise have been subject to hearing.

**F. Current Status of Settlement Discussions**

1.15 In a December 9, 2004 status report to the Commission, Judge Dowd summarized the progress made by the parties in reducing the number of contracts subject to the proceeding, presuming that the Commission grants the motions to exclude that have been filed thus far. She acknowledged that this motion from the CAISO would be

---

108-000 (July 22, 2004) as modified by Errata: Substitute Designation of Presiding Administrative Law Judge and Extension of Initial Decision Deadline (November 24, 2004).

forthcoming, and expressed her support for an extension of the settlement discussions, noting that “[w]ith additional time, the remaining participants can continue in their efforts towards reaching a settlement in principle, which may reduce the number of contracts remaining in the proceeding, in the event that a hearing is required.”<sup>14</sup>

## **II. REQUEST FOR EXTENSION OF SETTLEMENT DISCUSSIONS**

2.1 The CAISO requests that the Chief ALJ extend the settlement discussions until February 18, 2004. The settlement discussions have made significant progress, as contemplated by the parties when they initially requested the initiation of settlement discussions. The CAISO believes that with an extension of the settlement discussions, there is a very good possibility that parties to the sellers’ choice contracts remaining in the proceeding will be able to resolve the issues raised by these contracts under LMP without the need for litigation.

2.2 The procedural schedule adopted by the Chief Administrative Law Judge was developed at the CAISO’s request in order to resolve the issues raised by sellers’ choice contracts in a timeframe that would allow implementation of LMP. The CAISO now believes that extending the settlement discussions represents the best opportunity to resolve the issues raised by sellers’ choice contracts in a way that permits the CAISO to continue with the implementation of LMP.

---

<sup>14</sup> *Status Report To The Commission*, Docket No. EL04-108-000 (December 9, 2004).

2.3 In her status report of December 9, 2004, the Settlement Judge stated that, based on the settlement efforts to date, she supported the CAISO's request for an extension of the settlement discussions.<sup>15</sup>

2.4 The CAISO is not aware of any party that opposes an extension of the settlement discussions.

### **III. REQUEST FOR SUSPENSION OF PREHEARING CONFERENCE AND THE PROCEDURAL SCHEDULE, AND FOR A SHORT PERIOD TO DEVELOP A PROPOSAL FOR A REVISED PROCEDURAL SCHEDULE**

3.1 The CAISO also requests that the Chief Administrative Law Judge suspend the prehearing conference scheduled for December 15, 2004. The Settlement Judge, in her status report of December 9, 2004, recommended that this conference be suspended.<sup>16</sup> The purpose of the conference was to prepare for litigation to begin in January; with the extension of the settlement discussions no litigation would begin then, thus making the conference unnecessary.

3.2 Over the last few days the CAISO has discussed with Commission trial staff and several parties a proposed new procedural schedule for any hearing that might be held in this proceeding following the end of settlement discussions on February 18, 2005. While there is broad agreement on the general time periods for the various parts of such a schedule (two rounds of testimony, hearing, briefing, initial decision), there has not been time to reach agreement on the specific dates in such a schedule. Therefore, at this point the CAISO requests only that the Chief Administrative Law Judge suspend the

---

<sup>15</sup> See *Status Report* at P. 2.

<sup>16</sup> *Id.*



current procedural schedule and permit the CAISO to submit a specific consensus proposal within one week, by December 17, 2004.

#### IV. CONCLUSION

In order that the parties to the remaining sellers' choice contracts have the greatest opportunity to reach a settlement in this proceeding and thereby enable the CAISO to implement an LMP market redesign, the CAISO respectfully requests that the Chief Administrative Law Judge extend settlement discussions until February 18, 2005. The CAISO also requests that the Chief Administrative Law Judge suspend the prehearing conference scheduled for December 15, 2004, suspend the current procedural schedule, and permit the CAISO to submit a consensus proposal for a new procedural schedule by December 17, 2004.

Respectfully Submitted,

Charles F. Robinson  
General Counsel  
Sidney L. Mannheim  
Regulatory Counsel  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

/s/ J. Phillip Jordan  
J. Phillip Jordan  
Ronald E. Minsk  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, DC 20007  
(202) 424-7500

Counsel to the California Independent  
System Operator Corporation

Dated: December 10, 2004

### **Certificate of Service**

I hereby certify that I have this day served a copy of this document by posting it to the public document listserv, consistent with the guidelines contained in the Presiding Administrative Law Judge's Prehearing Order of July 1, 2004. Dated at Washington, DC this 10th day of December, 2004.

/s/ Ronald E. Minsk  
Ronald E. Minsk